



**Comptroller General  
of the United States**

Washington, D.C. 20548

## Decision

**Matter of:** Commodore Mfg., Inc.; BWC Technologies, Inc.  
**File:** B-239345; B-239345.2  
**Date:** July 25, 1990

Richard K. Harris, for the protester, Commodore Manufacturing, Inc.

Leo Castiglioni, for the protester, BWC Technologies, Inc.

Robert S. Moschetti, for Elliott Company, and J. A.

Calabrese, for Calabrese & Sons Inc., interested parties.

Thomas M. Hillin, Esq., Defense Logistics Agency, for the agency.

Mary Curcio, Esq., and Christine S. Melody, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

### DIGEST

Contracting agency properly rejected offerors' quotations where the offerors did not provide sufficient information to demonstrate that their offered products were equivalent to the product specified in the solicitation.

### DECISION

Commodore Mfg., Inc. and BWC Technologies, Inc. protest the award of a sole-source contract to Elliott Company under request for quotations (RFQ) No. DLA700-89-Q-BZ81, issued by the Defense Logistics Agency (DLA) to procure labyrinth assemblies.

We deny the protests.

The RFQ was issued on October 24, 1989, to procure 100 labyrinth packing assemblies (NSN 2825-00-908-2381) to be used by the Department of the Navy on steam turbine-driven forced ventilation fans, and identified Elliott part No. 670534-10 as the approved part. The RFQ included a standard "Products Offered" clause that permitted firms to offer alternate products that were either "identical to or physically,

049117/ 141929

mechanically, electronically and functionally interchangeable with" the named product. The Products Offered clause defined "exact product" as the identical product cited in the RFQ's acquisition identification description (AID), manufactured either by the manufacturer cited in the AID, or by a firm which manufactures the product for the manufacturer. An "alternate product" was defined as any other product even if manufactured in accordance with the drawings and specifications of the manufacturer listed in the AID.

Offerors of alternate products were advised that DLA did not have detailed specifications or other data to evaluate the technical acceptability of their products and thus were required to furnish legible copies of all drawings, specifications or other data necessary to describe clearly the characteristics and features of the product being offered, as well as drawings and other data covering the design, materials, etc., of the exact product, to enable the government to determine whether the offeror's product is equal to the product cited in the AID. Offerors were cautioned that the failure to furnish the complete data necessary to establish acceptability of the product offered might preclude consideration of the offer.

Five offerors, including Elliott, Commodore, and BWC, submitted quotations. Elliott offered its own approved part at a unit price of \$672. Commodore and BWC offered alternate parts of their own manufacture at unit prices of \$153.30 and \$202.50, respectively. BWC did not submit any technical data with its offer. Commodore submitted a technical data package, including an Elliott drawing, which was referred to the agency's Technical Services Division for evaluation. The package could not be evaluated, however, because the drawing was illegible; as a result, Commodore was asked to submit a clear copy.

In the meantime, DLA learned that in 1987, subsequent to the last procurement of the labyrinth assemblies in 1984, the Navy placed a sole-source restriction on the part on the basis that the manufacturing process required use of a tooling process proprietary to Elliott and not commercially or otherwise available to other manufacturers or the government. As a result, both Commodore and BWC ultimately were rejected due to the source restriction. DLA also learned that the current Elliott drawing is revision 5, not revision 2 as in the data package submitted by Commodore, and that the two revisions are different with regard to finishes, holes, process specifications and five dimensions.

Commodore and BWC now protest that DLA improperly rejected their offers. BWC asserts that it has supplied this part in the past and that the part has been successfully tested and approved. Commodore argues that it offered the exact product requested in the RFQ, not an alternate product, and that it successfully supplied the Navy with 64 of these labyrinth assemblies in 1983. Commodore further contends that any company that produces the components would have to develop the appropriate tooling, processes and inspection technologies, and that it has done so. Commodore finally asserts that it would have addressed the tooling justification if it had known that it was required to do so.

As a preliminary matter, DLA asserts that because the RFQ advised offerors that DLA was seeking the Elliott part and any other part would be considered an alternate, the protests involve improprieties apparent from the face of the solicitation. DLA thus concludes that the protests are untimely because they were not filed until April 1990, after the November 24, 1989, closing date for the receipt of quotations. See 4 C.F.R. § 21.2(a)(1) (1990).

We disagree. While the RFQ advises offerors that the Elliott part number is the exact product requested, it also contains the Products Offered clause which informs offerors that alternate products will be considered for award. It was only after the protesters received the letter informing them that their proposals had been rejected on the basis of the source restriction that the protesters became aware that DLA intended to award a sole-source contract to Elliott. Since the protests were filed on April 17 and 23, within 10 working days of receipt of this letter by the protesters, they are timely.

Turning to the merits of the protests, DLA argues that it properly awarded the contract to Elliott on a sole-source basis because due to the special tooling required, only the Elliott part would meet the government's needs. DLA further asserts that neither Commodore nor BWC offered the exact product requested, but instead offered an alternate product, which neither protester has demonstrated is equivalent to the Elliott part.

A proper basis for a sole-source award exists where only one known responsible source is available to provide the item or service which will satisfy the government's needs. Mine Safety Appliances Co., B-233052, Feb. 8, 1989, 89-1 CPD ¶ 127. In accordance with this principle, a proper basis

for a sole-source award exists where adequate data does not exist or is not available to permit conducting a competitive procurement within the time available. Piezo Crystal Co., 69 Comp. Gen. 97 (1989), 89-2 CPD ¶ 477. We will object to such an award only where the agency's action is shown to be unreasonable. Id.

Here, DLA justifies the sole-source award on the basis that manufacturing the labyrinth requires special tooling which is proprietary to Elliott. Both Commodore and BWC disagree with this position, arguing that they in fact have successfully manufactured the item in the past. DLA has not explained the rationale for the conclusion that the proprietary Elliott tooling is a prerequisite to manufacturing the item, and has not rebutted the protesters' contention that they have provided the items in the past and have developed the tooling necessary for its manufacture. The fact that other offerors do not have access to Elliott's proprietary tooling, without more, should not preclude consideration of those offerors' products.

Nevertheless, we find that DLA properly rejected both Commodore's and BWC's offers. Since both offerors were offering alternate parts, they were required under the Products Offered clause to furnish sufficient information for DLA to establish that the alternate parts offered were equal to the specified part. BWC submitted no technical data, however, and Commodore submitted data with an outdated drawing.

The protesters' contention that they have provided the items under prior contracts does not relieve them of the obligation to furnish relevant technical data. In this regard, the Products Offered clause advises offerors that technical information on the item offered should be submitted even where an offeror indicates that it has furnished the item previously, since the contracting activity may not have sufficient information to reasonably determine the offered product's acceptability. Accordingly, we have no basis to object to DLA's decision to reject both offers as technically unacceptable on the ground that neither offeror furnished sufficient data to establish the equivalency to the Elliott part of the alternate parts offered, as required

by the Products Offered clause. See Frontier Alloys & Mfg., Inc., B-227808, July 30, 1987, 87-2 CPD ¶ 119.

The protests are denied.



*for* James F. Hinchman  
General Counsel